

OREGON UPDATES

NOTABLE BILLS & CASES

OREGON SENATE BILLS

A number of Oregon laws that may affect employers went into effect in 2023, and some will go into effect in 2024. Outlined below are changes employers should know about.

Senate Bill 31—Solvency of Paid Family and Medical Leave Insurance Fund

This bill requires the Director of the Oregon Employment Department to determine the solvency of the Paid Family and Medical Leave Insurance Fund for purposes of paying benefits and granting awards. If the fund is determined solvent, then the Director must commence paying benefits on September 3, 2023. If the fund is insolvent, then the Director must delay the start of benefit payments until December 3, 2023, and make further quarterly determinations of the solvency of the fund. *Effective May 8, 2023.*

Senate Bill 168—Prohibition Against Promoting or Opposing Political Candidates or Legislation While on the Job

This bill amends ORS 260.432 to prohibit public employees from promoting or opposing the appointment, nomination, or election of a person to public office, and from promoting or opposing the filing of initiative, referendum, or recall petition, while on the job during working hours or while otherwise working in an official capacity. The bill excludes periods of time during which the public employee takes time off for meal or rest breaks, or other allowable time, in accordance with Oregon labor laws, from the meaning of when the employee is on the job during work hours. The bill also excludes a public employee's right to express personal political views, provided that a reasonable person would not infer that the personal political views of the public employee represent the views of the public employer of the public employee. *Effective January 1, 2024.*

Senate Bill 418—Removal of Minimum Four-Hour Time Period

This bill amends workers' compensation provisions under ORS 656.210 to remove the minimum four-hour time period that an injured worker with accepted disabling compensable injury must be absent from work before the injured worker may receive temporary disability benefits for such absence. *Effective June 1, 2023.*

Senate Bill 489—Elimination of Restrictions on Payment of Unemployment Benefits

This bill eliminates restrictions on payment of unemployment insurance benefits during school breaks and summer months to certain employees of educational institutions other



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than those performing instructional, research, or principal administrative work. *Effective January 1, 2024.*

Senate Bill 592—Amendments to Oregon Safe Employment Act

This bill amends the Oregon Safe Employment Act provisions under ORS 654.067 and 654.086 and authorizes the Director of the Department of Consumer and Business Services to conduct a comprehensive inspection of any place of employment as deemed necessary by the Department based on the prior violation history of the place of employment regarding any state occupational safety or health law, regulation, standard, rule, or order. The Director is required to conduct such an investigation if (a) three or more willful or repeated violations occur at a place of employment within a one-year period; or (b) whenever an accident investigation reveals that a violation has caused or contributed to a work-related fatality at a place of employment. *Effective May 24, 2023.*

Senate Bill 851—Model Respectful Workplace Policy

This bill requires the Oregon Bureau of Labor and Industries (BOLI) to prepare a model respectful workplace policy that employers may adopt. The bill directs BOLI to create informational materials that identify harm to employees and employers caused by workplace bullying and make materials available to employers. *Effective January 1, 2024.*

Senate Bill 907—Additional Amendments to Oregon Safe Employment Act

This bill amends Oregon Safe Employment Act provisions, ORS 654.062, and makes it an unlawful employment practice to discharge or otherwise discriminate against an employee or prospective employee because the employee, with no reasonable alternative and in good faith, refused to expose the employee or prospective employee to serious injury or death arising from a hazardous condition at a place of employment. *Effective January 1, 2024.*

Senate Bill 912—Additional Paid Family and Medical Leave Provisions

This bill authorizes the Director of the Oregon Employment Department to deduct amounts from future weekly family and medical leave insurance benefits for overpayments paid in error not due to the recipient's fault. The bill also provides that if a recipient is convicted by a court for fraudulent misrepresentation in obtaining benefits, the person must be ineligible for benefits for the calendar quarter in which the person was convicted and all prior calendar quarters, and after the conviction until the person has reimbursed the Paid Family and Medical Leave Insurance Fund for the full amount received as a result of the false statement or misrepresentation or the failure to report a material fact. *Effective September 4, 2023.*

Senate Bill 999—Definition of “One-Year Period” in Oregon Family Leave Act

This bill defines the phrase “one-year period” for purposes of determining the amount of family leave that the eligible employee is entitled to take within any given one-year period under the Oregon Family Leave Act (OFLA). The bill expands the definitions of family members and requires consideration of a significant personal bond in determining whether an individual qualifies as a family member by reason of affinity. *Effective date June 7, 2023.*

OREGON HOUSE OF REPRESENTATIVES BILLS

House Bill 2280—Definition of “Without Consent”

This bill creates a definition of “without consent” for school sexual harassment policies required under ORS 342.704. *Effective July 13, 2023.*

House Bill 2281—Designation of Civil Rights Coordinator at School Districts

This bill requires school districts and public charter schools to designate a civil rights coordinator to monitor, coordinate, and oversee school district compliance with state and federal laws prohibiting discrimination in public education; oversee investigations of complaints alleging discrimination in public education; provide guidance on civil rights issues; and satisfy training requirements. *Effective January 1, 2024.*

House Bill 2294—Establishment of Firefighter Apprenticeship Program

This bill appropriates money to BOLI and establishes a firefighter apprenticeship program to make grants to local service districts and local joint committees to administer firefighter apprenticeship training pilot projects. *Effective January 1, 2024.*

House Bill 2611—Dental and Vision Benefits to Part-Time Higher Education Faculty

This bill requires that dental and vision benefits be included in health care benefits available to part-time faculty members at public institutions of higher education. *Effective July 31, 2023.*

House Bill 3028—Prohibition Against Unlawful Actions Against Employees Who Are Appointed to State Boards or Commissions

This bill makes it an unlawful employment practice to discharge, threaten to discharge, intimidate, or coerce an employee by reason of the employee’s service or scheduled service as an appointed member of a state board or commission (as defined in ORS 292.495). The bill also prohibits an employer from requiring that an employee use vacation, sick, or annual leave for time spent by the employee as an appointed member of a state board or commission as defined in ORS 292.495, and the employer must allow the employee to leave without pay. The bill further requires an employee to provide at least 21 days’ notice to the employer of any time the employee needs for service on a state board or commission. The employee who alleges violation may file a complaint with the BOLI Civil Rights Division. *Effective September 24, 2023.*

House Bill 3331—Eligibility Requirements for Shared Work Plan Benefits

This bill amends eligibility requirements for an employee to receive benefits under a shared work plan under ORS 657.370. The bill removes the requirement that an “affected employee” must have been “continuously employed” and have worked for the employer “for six months on a full-time basis or for one year on a part-time basis.” The bill also expands the percentage reduction in the hours employees may work to qualify for benefits to at least 10 percent and to not more than 50 percent. *Effective September 24, 2023.*

House Bill 3471—Prohibition Against Certain Types of Settlement Agreement Provisions

This bill establishes that it is an unlawful employment practice for an employer to make an offer to negotiate a settlement for worker's compensation conditional on a provision barring a worker from seeking further employment, reemployment, or reinstatement with the employer, unless the worker first requests such provision. The bill applies to any settlement agreement disposing of all or part of a worker's claim for worker's compensation. A worker may file a BOLI complaint and may bring a civil action under ORS 659A.885. *Effective July 27, 2023.*

NOTABLE RECENT OREGON CASES

Courts across the country, including the U.S. Supreme Court, issued a number of decisions (referred to as opinions) that may affect employers and their operations in 2024. Outlined below are the notable Oregon opinions employers should know about.

OREGON SUPREME COURT

***Adelsperger v. Elkside Development LLC*, 371 Or 61, 529 P3d 230 (2023)**

The defendants were member-managers of a limited liability company (LLC), which had purchased another LLC, that in turn owned and operated an RV resort. Shortly after the purchase, the member-managers sent a letter to all campground members, identifying them as “owners” of the resort and indicating that they would not honor the LLC's membership contracts. The plaintiffs—a group of 71 people who, collectively, were a party to 39 membership contracts with the LLC—brought an action alleging contract and statutory claims against the member-managers individually and against the LLC. The trial court granted summary judgment on the plaintiffs' claims against the member-managers individually, relying on ORS 31.165, which provides that a member or manager is not personally liable for a debt, obligation, or liability of an LLC solely by reason of being or acting as a member or manager. On appeal, the plaintiff challenged the trial court's grant of summary judgment in the defendant's favor. The Oregon Court of Appeals affirmed without opinion.

The Oregon Supreme Court affirmed in part and reversed in part. Although this case did not involve employment claims, the case raises potentially relevant issues to employment claims, as the Supreme Court reaffirmed its construction of ORS 63.165(1) from its opinion in *Cortez v. Nacco Material Handling Group*, 356 Or 254, 280, 337 P3d 111 (2014): Although LLC members or managers are not personally liable for a liability for actions taken on behalf of the LLC solely by reasons of being a member or manager, they remain personally liable for actions taken on behalf of the LLC to the same extent that they would be liable if acting in an individual capacity. It then applied that principle to each of the three claims at issue in that case, and reversed on the plaintiff's elder abuse claim, but affirmed as to the plaintiff's breach of contract claim, and affirmed the intentional interference claim by an equally divided court.

***Buero v. Amazon.com Svcs.*, 370 Or 502, 521 P3d 471 (2022)**

On certified question from the U.S. Court of Appeals for the Ninth Circuit, in this wage and hour class action, the plaintiff alleged that the defendants violated Oregon's wage laws

and sought compensation for time spent waiting for and undergoing security screenings after clocking out of work. The defendants moved for judgment on the pleadings. The federal district court granted the motion, determining that the time the employees spent on mandatory screenings was not compensable under Oregon law. The plaintiff appealed, and the Ninth Circuit certified the question of compensability to the Oregon Supreme Court.

The plaintiff argued that the time spent for mandatory screenings was compensable as “work time” under ORS 653.010(11) and as “hours worked” under BOLI administrative rules. The Oregon Supreme Court disagreed with the plaintiff and concluded that Oregon law aligns with federal law regarding what activities are compensable and that time spent waiting for and undergoing mandatory security screenings on an employer’s premises before or after a work shift is compensable only if the screenings are either (1) an integral and indispensable part of an employee’s principal activities; or (2) compensable as a matter of contract, custom, or practice.

The dissent disagreed that Oregon law aligns with federal law and explained that Oregon law requires employers to compensate their employees “for each hour worked” and that “hours worked” includes “all time during which an employee is necessarily required to be on the employer’s premises.” Because employees are “necessarily required” to be on their employer’s premises for mandatory security screenings, the dissent would have concluded that the time the employees spend on the employer’s premises undergoing mandatory security screenings is compensable “hours worked” under Oregon law.

OREGON COURT OF APPEALS

***Bush v. City of Prineville*, 325 Or App 37, 529 P3d 970 (2023), adh’d to on recons, 326 Or App 538, 532 P3d 1261 (2023)**

The plaintiff served as the City’s police chief and also served in the Oregon National Guard. The City hired the Local Government Personnel Institute (LGPI) to investigate the plaintiff for his use of leave, placed him on administrative leave, and ultimately terminated him. The plaintiff brought action against the City for, among other things, discrimination against a uniformed service member in violation of ORS 659A.082 and LGPI for aiding and abetting under ORS 659A.030(1)(g). Both parties made ORCP 54E offers of judgment, and the plaintiff accepted the offers. After judgment was entered, the plaintiff filed a statement for attorney’s fees. The City objected and argued, among other things, that because a judgment already had been entered against the City for \$667,701, the limitation on liability for local public bodies under the Oregon Tort Claims Act (OTCA) already had been exceeded and, therefore, the plaintiff was not entitled to any attorney’s fees. The trial court rejected that argument and held that the limitations on liability in the OTCA did not apply and awarded plaintiff their requested attorney’s fees against the defendants jointly and severally. The City appealed.

The Court of Appeals held that the limitations on liability under the OTCA applies to damages, not attorney’s fees and that ORS 30.272(2)(f) does not preclude an award of attorney’s fees to the plaintiff. The court distinguished *Griffin v. Tri-Met*, 318 Or 500, 508, 870 P2d 808 (1994), which interpreted the 1985 version of the OTCA to determine that the limitations on “liability” included attorney’s fees. The court looked to the text, context, and legislative history of the current statute and concluded that the legislature did not intend to return *Griffin’s* interpretation of “liability.” However, the court reversed and remanded

back to the trial court to apportion fees between the defendants and determine whether the plaintiff incurred reasonable fees after LGPI was the sole remaining defendant.

The dissent would have applied *Griffin* to hold that the liability limits contained within ORS 30.272(2) are not limited to damages but include attorney fees awarded to the plaintiff.

A petition for review is pending before the Oregon Supreme Court (S070347).

Crosbie v. Asante, 322 Or App 250, 519 P3d 551 (2022)

The plaintiff, a registered nurse, brought an action against the defendants Asante and Asante Ashland Community Hospital LLC, alleging that she was unlawfully terminated under the Oregon Safe Employment Act (OSEA), ORS 654.062, in retaliation for complaining about safety issues, including violations committed by other nurses. The case was tried to a jury, and the plaintiff requested (and the court permitted) a “cat’s paw” jury instruction, which allows a jury to impute a subordinate employee’s bias to the person who made the adverse employment decision if the subordinate somehow caused the decision-maker’s action. The defendants argued that the instruction was only proper when the biased employee is a “supervisor,” not a “coworker.” The jury awarded the plaintiff \$470,000 in damages.

The defendants appealed. The Court of Appeals held that a “cat’s paw” jury instruction is appropriate even where the biased employee is a coworker if there is evidence that biased coworker actually influenced or was involved in making the adverse employment decision. However, the instruction’s language here permitting a jury to find that the coworker “affected” the ultimate decision was too broad—the biased employee must have been involved in or have influenced the ultimate decision-making process. Furthermore, the evidence here demonstrated that the decision-making process was insulated from nurses’ involvement. The instruction therefore was not harmless, and the Court of Appeals reversed.

The Oregon Supreme Court denied review on March 30, 2023.

Allison v. Dolich, 321 Or App 721, 518 P3d 591 (2022)

The plaintiffs, who worked as servers at defendants’ restaurants, brought an action as individuals and on behalf of a class of employees against the defendants Park Kitchen LLC and Bent Brick LLC and the restaurants’ individual owners under ORS chapter 659A for, among other acts, the imposition of unlawful tip pooling and retaliation. The trial court dismissed a claim against individual owner Dolich for the conversion of tip money and against both individual owners Dolich and Josephson for retaliation under ORS 659A.030(1)(f). The trial court also granted summary judgment to the individual owners, concluding that they could not aid and abet the LLCs under ORS 659A.030(1)(g), and granted summary judgment to all defendants on the plaintiffs’ claims for retaliation under ORS 659A.230(1). The plaintiffs appealed.

The Court of Appeals held that the trial court did not err in granting summary judgment on the plaintiffs’ ORS 659A.230(1) claim. The court agreed with the plaintiffs that ORS 659A.230 does not limit a “civil proceeding” to a judicial civil proceeding and that a complaint filed with an administrative agency for the purpose of seeking a remedy

for the employer's unlawful conduct initiatives a civil proceeding. However, there was no evidence that the plaintiffs here contacted BOLI for the purpose of bringing a civil proceeding.

The court concluded that the trial court erred in dismissing the plaintiff's aiding and abetting claims under ORS 659A.030(1)(g). The court reasoned that aiding and abetting liability applies to "any person" and that the legislature intended to impose aider or abettor liability on a person who undertakes to make decisions on behalf of a business-entity employer, resulting in the entity's liability under ORS chapter 659A.

Disclaimer: This summary is not legal advice and is based upon current statutes, regulations, and related guidance that is subject to change. It is provided solely for informational and educational purposes and does not fully address the complexity of the issues or steps employers must take under applicable laws. For legal advice on these or related issues, please consult qualified legal counsel directly.